THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 19th day of April,2007

W.P.No.33539 of 1998

Between:-

B. Nageswara Rao … Petitioner

and

The Secretary & Correspondent,
C.S.R. Sharma College, Ongole,
Prakasam District & others …
Respondents … Responde

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.33539 of 1998

ORAL ORDER:

This Writ Petition is filed being aggrieved by an Order dated 18-9-1998 passed by the 2nd respondent-Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad in his Proceedings No.1435/PC.1-1/87, whereunder the request of the petitioner for regularization of his services with effect from 28-1-1984 (date of initial appointment) was rejected saying that it is not feasible and the case of the petitioner was considered as per G.O.Ms.No.328, Education, dated 15-10-1997 in view of supersession of G.O.Ms.No.302, Education, dated 23-8-1991.

For the purpose of resolving the issue, it may be necessary to notice a few relevant facts. It appears, petitioner was appointed as a part-time Lecturer in the 1st respondent-College with effect from 28-1-1984. However, when his services were not regularized, he filed a Writ Petition being W.P.No.1353 of 1987, which was disposed of on 7-11-1989 with the following directions.

> "A direction shall therefore issue to the respondent to continue the petitioner as Lecturer in the Department of Physics in the third respondent college on a regular basis, as the policy of adhocism in the matter of appointment of teachers freely indulged in by the various aided colleges was condemned by the Supreme Court in **RATTANLAL v. STATE OF HARYANA AND OTHERS** (1986(2) APLJ 8 (SC). A further direction shall also issue to the respondents to pay to the petitioner the arrears of salary for the past period at the rate of Rs.1440/- per month. It is, however, made clear that if the petitioner was absent from duty for any particular period, that period

shall be excluded."

However, aggrieved by the said order, the Management preferred an appeal in W.A.No.560 of 1991, which was disposed of on 11-9-1996 holding as under:

> "It is quite strange that aggrieved by the order of the learned single Judge, the State did not file any appeal. The learned counsel for the appellant as well as the learned Government Pleader do not dispute the applicability of G.O.Ms.No.302, dt.23.8.91 which was issued subsequent to the order passed by the learned single judge. That G.O. was promulgated taking into consideration the hardships of those persons, who are working on temporary basis and the Government came with the said G.O. to regularise such services. Further, after the said G.O. came into force, the writ petitioner gave an application to the Management seeking that he may be paid the salary for the post which he is holding and with continuity of service. The said application was processed by the Management to the Government on 11.11.1991. According to the Management, the said correspondence is still available with the Government. There is no proper explanation as to why action has not been taken by the Government on the said representation. It is needless to say that by virtue of G.O.Ms.No.302, the writ petitioner is entitled for regularization and full salary in view of his services to the management as a lecturer for more than the period stipulated in the said G.O. Hence, there is no merit in this writ appeal. The silence on the part of the Department in not considering the proposal sent by the Management in its proceedings dated 11.11.1991 is not appreciable. At least now, without giving room to the writ petitioner to initiate contempt proceedings, the Management would take steps to comply with the Order passed by the learned single Judge and award all the benefits, which the petitioner is entitled to under G.O.Ms.No.302, dated 23.8.1991."

Thereafter, it seems, when the said Orders were not implemented, petitioner filed a contempt case in C.C.No.925 of 1997 and the same was disposed of on 21-10-1997 with the following Order:

> "4. Sri Krishna Murthy, learned counsel appearing for the Management submits that for the previous period also it is the Government which has to pay the salary to the petitioner/complainant as the institution has been admitted to grant-in-aid so also the post held by the petitioner/complainant.
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> 5. If there is any dispute in respect of payment of salary or

> other arrears to the writ petitioner for the period prior to regularization, it has to be sorted out between the Government and the Management. For the period he worked the writ petitioner is entitled to get salary as per the terms of agreement between the management and the petitioner. The management cannot ask the petitioner to make a claim to the Government for arrears also. It is open for the management to make a claim to the Government and get the arrears. Meanwhile, it cannot kept silent in not answering the demand made by the petitioner. The respondent-management to pay the arrears admitted within three months from this date."

Thereafter, the 2nd respondent issued the Proceedings dated 2-4-1998 regularizing the services of the petitioner as per G.O.Ms.No.328, Education, dated 15-10-1997. Then, the petitioner filed another contempt case in C.C.No.268 of 1998 alleging wilful violation of the Orders dated 21-10-1997 passed in C.C.No.925 of 1997. C.C.No.268 of 1998 was closed on 20-6-1998 observing that it is open to the petitioner to agitate about the disputed arrears and the correctness of the date of regularization of his services before the appropriate forum. Thereafter, the petitioner made representations on 11-8-1998 and 27-8-1998 seeking to regularize his services with retrospective effect from 28-1-1984. But, the same were rejected by an Order dated 18-9-1998 passed by the 2nd respondent, which is impugned in this Writ Petition.

Now, it is the contention of the petitioner that in view of the Judgment of a Division Bench of this Court in W.A.No.560 of 1991, dated 11-9-1996, he is entitled for regularization of his services in terms of G.O.Ms.No.302, Education, dated 23-8-1991. According to the petitioner, the writ appeal was disposed of on 11-9-1996 and G.O.Ms.No.328 was issued on 15-10-1997. Therefore, his case requires to be considered for the purpose of regularization of his services against an aided vacancy as per the terms of G.O.Ms.No.302, Education, dated 23-8-1991. By that time, as noticed above by

the Division Bench, his case was recommended by the management for regularization and the same was pending with the Government. Instead of taking steps for considering his case for regularization of his services as per G.O.Ms.No.302, Education, dated 23-8-1991, the 2nd respondent, to avoid the rigor of the Judgments of this Court, had adopted the procedure as required in G.O.Ms.No.328, Education, dated 15-10-1997, which was readily available with them to deny his case for regularization of services with retrospective effect from 28-1-1984.

Learned Government Pleader appearing for respondents 2 and 3 contended that the Judgment in Writ Appeal No.560 of 1991 was the subject matter of contempt case, as noticed above, and the petitioner is not entitled for consideration of his case as per G.O.Ms.No.302, Education, dated 23-8-1991. When the case of the petitioner was taken up for consideration as per the Judgment of this Court in W.A.No.560 of 1991, by that time, G.O.Ms.No.302, Education, dated 23-8-1991 was superseded and G.O.Ms.No.328, Education, dated 15-10-1997 was issued. Therefore, respondent No.2 has followed the procedure as per G.O.Ms.No.328, Education, dated 15-10-1997 and the services of the petitioner were regularized with effect from 2-4-1998, the date on which his case was considered, as per Clause 9(10) of G.O.Ms.No.328, Education, dated 15-10-1997. As such, petitioner is not entitled for regularization of his services as per G.O.Ms.No.302, Education, dated 23-8-1991, which was not in vogue as on the date of consideration of his case nor he is entitled for regularization of his services from any retrospective date.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Order and other material made available on record.

The Judgment in Writ Appeal No.560 of 1991, as noticed above, categorically indicates that the Management would take steps to comply with the order passed by the learned single Judge and award all the benefits, which the petitioner is entitled under G.O.Ms.No.302, Education, dated 23-8-1991. This itself shows that the case of the petitioner was required to be consider as per the said G.O. The Judgment in the writ appeal was rendered on 11-9-1996. Before the case of the petitioner was taken up for consideration, G.O.Ms.No.328, Education, dated 15-10-1997 has come into existence and G.O.Ms.No.302, Education, dated 23-8-1991 was superseded. Therefore, it appears, 2nd respondent had considered the case of the petitioner under G.O.Ms.No.328, Education, dated 15-10-1997 and the services of the petitioner were regularized against an aided vacancy with effect from 2-4-1998.

The fact that the petitioner was appointed as part-time Lecturer with effect from 28-1-1984 and he continuously worked as such till the date of his regularization i.e. 2-4-1998 is not in dispute. It is also not in dispute that the case of the petitioner was recommended by the Management on 11-11-1991, which was pending before the Government. At this stage, learned Government Pleader submitted that the 1st respondent-Management has not followed the procedure at all while recommending the case of the petitioner earlier under G.O.Ms.No.302, Education, dated 23-8-1991 and as such, it was not considered. But, this has not been reflected in the impugned Order. Since this Court in the writ appeal has directed that steps be taken for awarding all the benefits, which the petitioner is entitled to under G.O.Ms.No.302, Education, dated 23-8-1991, no effort has been taken by the Management or the Government in that regard. In the circumstances, I deem it appropriate to direct the 2nd respondent to

reconsider the case of the petitioner as per the Judgment in W.A.No.560 of 1991 by applying the provisions of G.O.Ms.No.302, Education, dated 23-8-1991, which was in vogue as on the date of disposal of the writ appeal and pass appropriate orders, within a period of eight weeks from the date of receipt of a copy of this order. By the time, the case of the petitioner was considered, he had put in more than 14 years of service. Therefore, it is desirable that the case of the petitioner is considered sympathetically, at least, the continuity of service for the purpose of terminal benefits.

Accordingly, the Writ Petition is disposed of. No order as to costs.

19-4-2007

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